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Decision 00-10-049 October 19, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valencia Water Company (U34-W) seeking approval of its updated Water Management Program as ordered in Commission Resolution W-4154 dated August 5, 1999.	Application 99-12-025 (Filed December 17, 1999)

Nossaman, Guthner, Knox & Elliott, LLP, by Martin A. Mattes, Attorney at Law, and Robert J. Di Primio, for Valencia Water Company, applicant.
Brecher & Volker, LLP, by Stephan C. Volker. Attorney at Law, for Friends of the Santa Clara River, Santa Clarita Organization for Planning the Environment and Sierra Club, complainants.
James L. McBride, County Counsel, by Dennis L. Slivinski, Assistant County Counsel and Antonette B. Cordero, Assistant County Counsel for the County of Ventura.
Edwin and Joan Dunn, Robert P. Lathrop, for themselves.
Peter G. Fairchild, Attorney at Law, and Fred Curry, for the Water Division.

INTERIM OPINION

Summary

The County of Ventura (Ventura) and the Sierra Club, Santa Clarita Organization for Planning the Environment and Friends of the Santa Clara River (collectively, Sierra Club) filed motions asking the Commission to determine that this proceeding involves a "project" subject to the California Environmental

Quality Act (CEQA), Public Resources Code Sections 21000 et seq., and the Commission's Rules of Practice and Procedure Rule 17.1.

The Commission concludes that Valencia Water Company's (Valencia) 1999 Water Management Program (WMP), in conjunction with Valencia's pending Advice Letter (AL) 88 (requesting permission to expand its service area and serve 1,898 new customers), and AL 90 (requesting permission to expand its service area and serve 4,060 new customers) requires CEQA review. Accordingly, Valencia is directed to address CEQA review of its WMP and ALs 88 and 90 in this proceeding.

Procedural and Substantive Background

The underlying issues about which the present proceeding revolves are not new to the Commission. In September 1998, the Sierra Club filed a complaint against Valencia with the Commission, seeking a determination that Valencia had reached the limit of its capacity to supply water to new customers. (Decision (D.) 99-04-061, p. 1.) Valencia responded that it did have adequate capacity to serve new customers, and in any event, Sierra Club's complaint was premature, as Valencia would prepare and submit an application to the Commission prior to expanding its service to the potential new customers at issue. (*Id.*, pp. 2-3.) The Commission dismissed the complaint, concluding that Valencia had "sufficient supply to serve its current customers in its approved service territory." (*Id.*, Conclusion of Law 2, p. 17.) The Commission also concluded that: "Valencia bears the burden of proving that it has adequate capacity to serve customers in any proposed additional service area," and "The Commission will adjudicate Valencia's capacity to serve additional customers in the proceedings where Valencia seeks authorization to serve those customers." (*Id.*, Conclusions of Law 3 and 4, pp. 17-18.)

In March and April 1999, during the pendency of the complaint, Valencia filed AL 84 and 85, requesting authority to expand its service territory to serve an additional 3,400 homes. Sierra Club protested the advice letters. The Commission approved the advice letters, but noted that: "Clearly, however, the allegations made in the protests could impact long term water demand, and need to be litigated. Consequently, Branch recommends that, although ALs 84 and 85 should be approved, [Valencia] should be ordered to prepare an updated Water Management Program to enable the Commission and all interested parties to evaluate the effects of further expansion of its service area on its water supply." (W-4154, August 5, 1999, p. 6.) Accordingly, the Commission ordered Valencia to file an application for approval of an updated WMP.

Subsequently, in D.99-11-032, the Commission clarified and corrected minor aspects of Resolution W-4154, and denied Sierra Club's Application for Rehearing. In doing so, the Commission stated: "We agree with Sierra Club, however, that certain factual issues concerning future demand and future availability of water in the Santa Clarita basin must be resolved before further extensions of Valencia's service area can be approved. In Resolution W-4154, we ordered Valencia to file an updated Water Management Plan by January 3, 2000. (Ordering Paragraph 2.) The WMP approval process will, in this case, provide the opportunity for a more comprehensive evaluation of the evidence relating to future supply and demand. An evidentiary hearing will be held and interested parties such as Sierra Club will have an opportunity to participate." (*Id.*, pp. 2-3.)

Consistent with Resolution W-4154, Valencia filed the instant application on December 17, 1999, initiating the present proceeding. Ventura, Sierra Club, and the Ratepayer Representation Branch of the Water Division filed protests to Valencia's application.

After prehearing conference (PHC) statements were filed by Valencia and Ventura, a PHC was held on February 8, 2000, before Assigned Commissioner Josiah Neeper and Administrative Law Judge Bertram Patrick. At the PHC, the scope of the proceeding and the issues that were to be subject to evidentiary hearing were discussed at length.

On February 18, 2000, Commissioner Neeper issued his "Scoping Memo and Ruling of Assigned Commissioner." In responding to Ventura and Sierra Club's efforts to broaden the proceeding to address potentially adverse impacts to other users of water in the region, the Scoping Memo quoted extensively from the Commission's discussion of its limited role in water resources planning in last year's decision in Sierra Club's complaint against Valencia,[1] and noted that "the Commission has the power neither to adjudicate water rights nor to take on the functions of a regional water or land use planning agency." (Scoping Memo, at 5.) Commissioner Neeper concluded that the scope of the proceeding "should be limited to (1) whether Valencia's current and planned water supplies are sufficient to meet future customer needs; and (2) whether the Commission should approve Valencia's updated WMP." (*Id.*)

Evidentiary hearings commenced on May 22, 2000. Ventura and Sierra Club filed their motions for determination of CEQA applicability on May 22 and May 30, respectively. Valencia filed its response on June 28. Ventura and Sierra Club filed replies on July 7 and 14, 2000, respectively.

[1] *Sierra Club, Angeles Chapter v. Valencia Water Company*, D.99-04-061, adopted April 22, 1999.

Jurisdiction

The two state agencies primarily responsible for overseeing water planning are the California Department of Water Resources, which manages the State Water Project and produces the California Water Plan, and the State Water Resources Control Board (State Board) and Regional Water Quality Control Boards which have authority over water allocation and water quality protection.

In addition to the state agencies which have broad planning and management powers, local government also has a part in water use decisions. For example, county boards of supervisors, county water agencies, land use planning agencies, city governments, municipal water districts and many special districts all have a role in the use of water in California.

By comparison, the Commission's role is significantly more limited, with a focus upon ensuring that each jurisdictional water utility provides its customers with "just and reasonable service, . . . and facilities as are necessary to promote the safety, health, comfort and convenience of its patrons, employees, and the public." (Pub. Util. Code § 451.[2]) The Commission has further delineated the service standard in its General Order (GO) 103 where it prescribes Standards of Service including water quality, water supply, and water pressure, as well as many other details of service. Also, the Commission may limit the addition of new customers by a water utility if the Commission finds that such addition would impair supply to existing customers (see Pub. Util. Code § 2708).

The Commission has, in general, not dictated to investor-owned utilities what method of obtaining water must be used to meet its present and future

[2] The Commission's limited role in water planning is set forth in *Sierra Club, Angeles Chapter v. Valencia Water Company*, D.99-04-061 dated April 22, 1999.

responsibility of providing safe and adequate supply of water at reasonable rates.[3]

The Commission monitors water supply issues through each utility's general rate case. Through the WMP included as part of the general rate case, the Commission may take up supply issues where significant unanticipated events affect water supply, such as service outages or a prolonged drought.[4]

The Commission does not "adjudicate" the water supply in a basin. Where that has occurred in California, it has been done in a court proceeding or by an act of the Legislature creating a water management district. The Commission only adjudicates the extension of a utility's service territory and assures itself (and the Department of Real Estate through the Water Supply Questionnaire process) that adequate water is available to meet demand.

Where the water utility is proposing to expand into a contiguous area, the water utility must amend its service territory map on file with the Commission. This is accomplished through filing an advice letter. If not protested, an advice letter goes into effect but if it is protested, the advice letter can be assigned for hearing and decision much like an application. When an applicant, such as Valencia, proposes to expand its service territory to include new developments,

[3] See *Southern California Water,* 48 CPUC2d at 517.

[4] See *Measures to Mitigate the Effects of Drought on Regulated Water Utilities,* 53 CPUC2d 270.

that applicant bears the burden of proving in the application and advice letter process that it has adequate supplies for the proposed new customers.[5]

The WMP

The WMP evaluates the long-term demand, water supplies, and conservation programs to meet that demand. The Program began as a result of the Commission requiring each Class A water company to prepare a WMP as a result of the drought proceeding, I.89-03-055. Pursuant to D.92-09-084, as confirmed by D.94-02-043 in that proceeding, each Class A company is required to update its WMP as part of every general rate case. Valencia filed a WMP with the Commission in January 1994 as part of its last general rate case. Thereafter, Valencia did not file an updated WMP because it had not filed a general rate case since 1994.

In Resolution W-4154, dated August 5, 1999, the Commission noted that it had been over five years since the filing of Valencia's last WMP and concluded that "a new analysis was warranted to ensure timely analysis of future filings." Therefore, Valencia was ordered to file an application for approval of an updated WMP as required by D.94-02-043. This process – essentially requiring Valencia to have an updated WMP prior to gaining approval of Advice Letters to expand its service territory – is unusual, but was adopted to provide a forum to review the issues raised earlier by Sierra Club.

[5] *See, Ambler Park Water Utility and California American Water Company*, D.98-09-038, where the Commission found that the issue of adequacy of supply for a potential development would be addressed in the advice letter process.

Advice Letters 88 and 90

On March 20, 2000, Valencia filed AL 88[6] seeking authority to expand its service area "to include North Valencia Annexation – 2 which includes Tracts 44831, 52667 and 52111 and Mountain View Tracts 46564, 46564-04, 46564-05 and 52302." Valencia requests that the existing service area boundaries be moved to include all of the above tracts. The addition would comprise 1,735 dwelling units located on 485 acres. Valencia states that these tracts have approval from the City of Santa Clarita and Los Angeles County, respectively.

On September 19, 2000, Valencia filed AL 90[7] seeking authority to expand its service area "to include Westcreek Tract #52455 and Tesoro del Valle Tract #51644." Requesting that existing service area boundaries be moved to included these tracts, Valencia summarized the effect of the proposed authorization as being to allow the addition of 4,060 customer units.

While AL 88 and AL 90 have not been formally consolidated with the WMP, and remain separate filings, they are related, and both ALs 88 and 90 are dependent upon the WMP. As described above, the Commission's stated intent is that approval of advice letters such as AL 88 and AL 90 can only occur after Commission approval of Valencia's WMP. Staff will not proceed with the less formal advice letter process while the formal proceeding addressing the WMP remains unresolved.

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[6] Sierra Club raised the issue of AL 88 in its reply brief. While Valencia filed the advice letter, and presumably knew in advance that it intended to file the advice letter, Valencia did not have an express opportunity to address this issue.

[7] Valencia raised the issue of AL 90 in its October 6, 2000, comments on the ALJ's Proposed Decision.

Position of Ventura

Ventura argues that Valencia's WMP constitutes a "project" within the meaning of CEQA. According to Ventura, the Program requires the approval of the Commission and once approved, will serve as the basis for issuance of future advice letters that will allow Valencia to add new customers and extend its service areas. Ventura points out that the Commission has discretion to approve the Program and for how long. It also has discretion to impose conditions on Valencia. (*See, e.g.*, Pub. Util. Code §§ 761 and 770.) Further, Ventura contends that Valencia's proposed groundwater use may cause a direct or reasonably foreseeable indirect change in the environment because Valencia proposes to provide more water and serve more customers than it currently does. Ventura asserts that these changes to the environment are potentially significant in at least the following ways: (1) increased groundwater pumping may cause a decrease in water quality; (2) increased groundwater pumping may exacerbate the spread of ammonium perchlorate contamination in the acquifers;[8] (3) increased groundwater pumping could detrimentally impact groundwater and surface water flow to down-gradient basins in Ventura County; (4) increased water production could induce additional growth in the area; and (5) overestimation of both groundwater and water from the State Water Project could result in greater and more frequent water shortages. Consequently, Ventura asserts that CEQA requires that an Environmental Impact Report (EIR) be prepared analyzing all the program's environmental effects.

[8] Ammonium perchlorate has been detected in four wells in the Saugus Aquifer. These wells are temporarily out of service.

Position of Sierra Club

Sierra Club argues that Valencia's application for approval of its WMP is a "project" under CEQA because its approval is, by this Commission's own order, an essential step in the expansion of its service area and ensuing rapid urban development proposed by Valencia. Sierra Club contends that Valencia's WMP is not categorically exempt as a "planning study," because: (1) approval of the Program would foreclose water supply challenges to Valencia's advice letters that are based on the water supply claimed in the water management plan, (2) the WMP proposes dramatically increased pumping from the Alluvial Aquifer and the Saugus Formation, actions that could deplete ground and surface water supplies, harming vegetation and wildlife dependent on those supplies, and spread ammonium perchlorate contamination; and (3), Valencia's application is not exempt from CEQA on the grounds this is a "rate setting" proceeding, since this proceeding involves far more than merely the setting of rates. According to Sierra Club, rate setting may be subject to CEQA where, as here, the proposed rate structure could itself trigger environmental harm (*e.g.*, by prompting additional groundwater pumping).[9]

Sierra Club argues that with regard to projects proposed by private entities such as Valencia (as distinct from public agencies), "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary … permit … or other entitlement for use of the project." (CEQA Guidelines § 15352(b).) Sierra Club contends that under this criterion, Commission approval of Valencia's application would constitute an "approval"

[9] See *Shawn v. Golden Gate Bridge District*, (1976) 60 Cal.App.3d 699, 703.

subject to CEQA requirements, because Valencia requests the Commission to permit the use and implementation of its proposed 1999 WMP.

Further, Sierra Club contends, Valencia's application constitutes a "discretionary project" subject to CEQA, and that this Commission is, at least at this juncture, the appropriate lead agency obliged to conduct the environmental review required by CEQA and Rule 17.1 before approving Valencia's application. Sierra Club agrees that to the extent that Valencia's application proposes the extraction of groundwater that is hydrologically integrated with the surface flow of the Santa Clara River (and for which a water appropriation permit would thus be required from the State Board under Water Code §§ 1200 et seq.), the State Board may be the more appropriate lead agency, in which case the Commission would review this project as a "responsible agency" still subject to certain CEQA duties. Sierra Club requests the Commission to determine (1) the applicability of CEQA to this proceeding, and (2) whether the Commission is properly a "lead agency" or a "responsible agency" subject to the CEQA duties corresponding to those respective designations.

Position of Valencia

Valencia argues that (1) its WMP is not a "project" under CEQA; (2) even if it is a "project," the WMP is categorically exempted from CEQA review on the grounds it is "planning study"; (3) its WMP is statutorily exempt from CEQA under Water Code § 10652, which pertains to urban water management plans; and (4) Valencia's application is exempt from CEQA because this proceeding involves "rate setting," and is thus exempt under Public Resources Code Section 21080(b)(8).

Discussion

In order to resolve the issue of the applicability of CEQA to the present proceedings, we must answer two basic questions. First, whether Valencia's application for approval of its WMP, or its ALs 88 and 90 to expand its service territory, constitute a "project" under CEQA. Second, if so, whether there is an applicable exemption from CEQA. Given the interrelationship between the WMP and the advice letters discussed above, these filings need to be considered together in the analysis that the Commission performs in answering these questions.

1. Whether the WMP or ALs 88 and 90 Constitute a Project Under CEQA

CEQA generally requires consideration of three basic questions in determining whether an activity is a project. First, whether the activity requires discretionary government approval. Second, whether the activity involves the issuance of a lease, permit, license, certificate, or other entitlement. Third, whether the activity has the potential to result in a significant environmental effect.

CEQA Guidelines Section 15268 and 15369 compare ministerial vs. discretionary decisions. Ministerial projects are exempt from CEQA. The guidelines state that a ministerial decision involves only the use of fixed standards or objective measurements, with no subjective judgement by the reviewing agency. Examples of activities involving ministerial decisions include automobile registrations, building permits, and business licenses. The guidelines also state that the particular public agency can and should make the determination of what is "ministerial" based on analysis of its own laws.

Approval of a WMP or an advice letter is not simply a matter of applying a fixed set of standards or objective measurements. In making such a

determination the Commission takes into account many factors, and may require certain changes if it determines it necessary to mitigate environmental impacts.[10] Accordingly, we conclude the WMP and ALs 88 and 90 together require discretionary approval.

In addressing the second prong of the criteria by which we determine whether the WMP is a project under CEQA, the parties have properly focused upon the issue of the nature of the WMP itself. Valencia argues that the WMP does not provide Valencia with any "entitlement," and that there is no causal link between Commission approval of the WMP and any potential environmental impacts. (P. 5.) The crux of Valencia's entitlement argument is "Given that approval of a WMP does not bind the Commission, such approval cannot be said to create any entitlement." (Pp.5-6.) Valencia's causation argument is similar, albeit with a different focus: "In the present matter, the Commission's approval of the WMP does not commit the Commission to do anything." (P. 8.) In the context of a more typical application for approval of a WMP, these arguments might have some weight, but here they tend to miss the point. While Valencia is correct that the WMP, by itself, neither entitles Valencia nor commits the Commission to future expansion of Valencia's service area, Valencia cannot expand its service area (via advice letter) without prior Commission approval of the WMP. As the Commission stated in W-4154, "the remaining issues of water

[10] See *Friends of Westwood, Inc. v. Los Angeles,* (1987) 191 Cal. App.3d, 259, which found that a ministerial approval is limited to one that can be legally compelled without substantial modification or change. Under *Friends,* it is discretionary if the agency possesses discretion to require changes to mitigate environmental consequences an EIR might uncover.

supply should be resolved before any additional service territory extensions occur."

The Commission has already determined that no advice letters to expand Valencia's service territory will be approved without an updated WMP, making the Commission's approval of the WMP an essential step in the approval of subsequent advice letters. If the advice letters could result in an environmental impact, then Commission approval of the WMP is "an essential step in a chain of events leading to a change in the physical environment," which would require CEQA review. [11]

Based upon the record before the Commission, expansion of Valencia's service area, pursuant to the WMP and ALs 88 and 90 (and possible subsequent advice letters), has the potential to create a significant environmental impact. Witnesses for Ventura and Sierra Club offered testimony indicating the possibility of significant impacts upon water quality and availability as a result of Valencia's proposed increase in groundwater pumping, as well as other less direct impacts. Under CEQA, we cannot ignore the credible possibility of these significant impacts in our review of the WMP and ALs 88 and 90.

In view of the relationship between the WMP and advice letters in this case, as well as the possibility of significant environmental impact, we take particular note of the policy consideration emphasized in *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. 3d 247, 263, stating that "[t]he fundamental purpose of CEQA is to ensure that environmental considerations play a significant role in governmental decision-making. Consequently, it is desirable

[11] See *Kaufman & Broad v. Morgan Hill Unified School District*, (1992) 9 Cal.App.4th 464, citing to *Bozung v. Local Agency Formation Commission*, (1975) 13 Cal.3d 263.

that environmental information be furnished the decision-maker at the earliest possible stage…"

2. Whether CEQA Exemptions Apply to the WMP or ALs 88 and 90

The positions of the parties address three possible CEQA exemptions. First, whether the WMP is categorically exempt as a planning and feasibility study. Second, whether the WMP is exempt as an Urban Water Management Plan under Water Code Section 10652. Third, whether the WMP is exempt because the proceeding involves ratesetting. As discussed below, we conclude that these exemptions do not apply.

3. The WMP is not Categorically Exempt From CEQA Review Because it is Only a Planning Study for Possible Future Actions

CEQA Guidelines provide an exemption from CEQA requirements for feasibility and planning studies. Specifically, Section 15262 of the CEQA Guidelines provides as follows:

> "A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities."

Valencia argues that Section 15262 applies to provide a CEQA exemption for the WMP. Ventura and Sierra Club argue that testimony of Valencia's own witnesses defeats the conclusion that the WMP is merely a planning and feasibility study. For example, Ventura and Sierra Club cite the testimony of Valencia's counsel stating "[t]his proceeding [in review of Valencia's WMP] was

intended to reach a resolution if our program is adequate that would allow us to go forward with serving new developments."[12]

Indeed the WMP, and particularly in conjunction with ALs 88 and 90 appear to go beyond a document projecting the mere feasibility of expanding service territory. The WMP provides analysis of long-term demand, water supply, and conservation measures for implementation to meet that demand, relative to proposed service territory expansion and specifically delineated new dwelling unit tracts. If Valencia viewed the WMP as a document simply for planning and feasibility purposes, we might not expect immediate and specific action to be the result of approval of the WMP. However, Valencia's own statements indicate precisely that intention to take action upon approval.

As already noted in this decision, implementation of the WMP and ALs 88 and 90 (and possible subsequent advice letters) has the potential to create a significant environmental impact. Therefore, consistent with the reasoning in *Edna Valley Assoc. v. San Luis Obispo County et al.*, (1977) 67 Cal.App.3d 444 and *Bozung v. Local Agency Formation Comm.*,[13] CEQA policy requires a consideration of environmental issues.

As described above, the Commission, in its Decisions leading up to the present proceeding, has expressly created a linkage between this WMP application and subsequent advice letters for expansion of Valencia's service territory. The WMP and advice letters at issue are more substantial than the type of feasibility and planning study contemplated by the Section 15262 exemption.

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[12] Reporter's Transcript, Volume 5, p. 561, lines 9-12.

[13] See *supra* fn. 10.

This determination is based upon the unique facts before us, and we do not reach the issue of whether any other WMP to come before the Commission would qualify for this exemption. However, in the instant case we find that this exemption does not apply.

4. The WMP is not Exempt From CEQA as an Urban Water Management Plan

The Urban Water Management Planning Act, Cal. Water Code Section 10610 et seq., originally enacted in 1983, requires every urban water supplier[14] -- of which Valencia is one – to prepare and adopt an Urban WMP and to update its plan at lease once every five years. (*Id.*, §§ 10620, 10621.) The adopted and amended plans must be filed with the Department of Water Resources (DWR), which must, in the succeeding year, submit a report to the Legislature summarizing the status of such plans. (*Id.*, § 10644.)

Water Code Section 10652 provides an exemption from the application of CEQA requirements for Urban Water Programs. Specifically, Section 10652 states:

> "The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part or to the implementation of actions taken pursuant to Section 10632.[15] Nothing in this part shall be interpreted as exempting from the California Environmental

[14] An urban water supplier is defined as a provider of water for municipal purposes directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. (Cal. Water Code § 10617.)

[15] Section 10632 outlines the required elements of a water shortage contingency analysis.

> Quality Act any project that would significantly affect water supplies for fish and wildlife, or any project for implementation of the plan, other than projects implementing Section 10632, or any project for expanded or additional water supplies." [16]

The "part" to which Section 10652 refers is Part 2.6 of Division 6 of the Water Code – the Urban Water Management Planning Act. Part 2.6 requires water purveyors such as Valencia to include in their WMPs, inter alia, descriptions of their service areas, identification of existing and planned sources of water, description of the reliability of their water supplies, quantification of past, present and projected water use, and description of water demand management measures being implemented or planned. (Cal. Water Code, § 10631.)

Ventura and Sierra Club argue that the exemption from CEQA set forth in the Water Code applies only to Urban WMPs submitted to the DWR pursuant to that act. Furthermore, the parties state that the exemption does not apply because by its own terms, the exemption does not apply to any project for expanded or additional water supply, and that the Urban WMP serves a different purpose than the WMP.

Valencia states that it previously filed an Urban WMP with the DWR, and that it is the same report as the WMP. Except for a difference in the title of the reports and certain statistical and factual information updated to reflect different filing dates, the reports are the same. Therefore, in Valencia's view, the CEQA

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[16] The exemption for Urban WMPs is also referred to by the CEQA Guidelines: "The following is a list of existing statutory exemptions. … (w) The preparation and adoption of Urban Water Management Programs pursuant to the provisions of Section 10652 of the Water Code." (Cal. Code Regs., Title 14, § 15282.)

exemption in the Water Code for the Urban WMP also applies to provide a CEQA exemption for its WMP before the Commission.

The plain language of Water Code Section 10652, provides a CEQA exemption only for certain Urban Water Code Programs submitted to the DWR. Nothing in that section addresses a WMP before the Commission. Valencia's position appears to require reading Section 10652 together with Section 10653 to reach its conclusion. Section 10653 provides that the adoption of an Urban WMP "shall satisfy any requirements of state law, regulation, or order, including those of the State Water Resources Control Board and the Public Utilities Commission, for preparation of water management plans or conservation plans," provided that the authority of either of those agencies to require additional information to implement their existing authority shall not be limited. [17]

We are not convinced of Valencia's interpretation of the relationship between Section 10652 and 10653, or that Section 10653 is intended to go further than provide for administrative efficiencies between agencies by allowing essentially the same report to be submitted to multiple agencies for similar purposes. However, even if Valencia is correct that the two sections can be linked to provide a CEQA exemption for WMPs, Section 10652 would not permit a CEQA exemption in this case.

Section 10652 expressly states that the CEQA exemption does not apply to "any project for expanded or additional water supply." Here, we ordered Valencia to submit its WMP as a prerequisite to determining whether to approve

[17] The reference in Section 10653 to the Public Utilities Commission was added in 1995, in the most recent legislation amending the Urban WMP Act. (See Stats. 1995, Ch. 854 (SB 1011).)

proposals for expanded service territory in conjunction with any further advice letters, and in this case ALs 88 and 90. The nature of this review is to determine whether to authorize "projects for expanded or additional water supply." Therefore, even if we found that the Urban WMP and the WMP are equivalent, the WMP would not be exempt from CEQA under Section 10652. Accordingly, this exemption does not apply.

5. The WMP is not Exempt from CEQA Because this Proceeding Involves Ratesetting

Public Resources Code Section 21080(b)(8) provides a general exemption from CEQA requirements for certain ratesetting proceedings. That section states that the division does not apply to the following activities:

> "(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are of for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for projects necessary to maintain service within existing areas, or (E) obtaining funds for projects necessary to maintain those intracity transfers as are authorized by city charter."

Valencia states the WMP is exempt from CEQA under Public Resources Code Section 21080(b)(8). Ventura and Sierra Club state that there is no hard and fast rule that "ratemaking proceedings" are exempt from CEQA, and that this proceeding involves more than ratesetting. They rely on *Shawn v. Golden Gate Bridge District* (1976) 60 Cal. App.3d 699 to support their position.

Pursuant to Pub. Util. Code § 1701.1, the Commission is required to categorize proceedings as quasi-legislative, adjudication, or ratesetting. Quasi-

legislative cases are generally defined as establishing policy, such as rulemaking and investigation proceedings. (Pub. Util. Code § 1701.1(c)((1).) Adjudication cases are generally enforcement and complaint matters. (Pub. Util. Code § 1701.1(c)(2).) Ratesetting cases are those in which rates are established for a specific company, such as general rate cases, performance-based ratemaking, and other ratesetting mechanisms. (Pub. Util. Code § 1701.1(c)(3).) Furthermore, under the Commission's Rules of Practice and Procedure, Rule 6.11(c), proceedings which do not clearly fit into one of the three categories may be categorized as ratesetting (see also Rule 5(c)). As such, ratesetting is a residual category.

Clearly this matter is not a quasi-legislative or adjudicatory proceeding. For purposes of the Commission's obligation to categorize proceedings, it is a ratesetting proceeding. However, our obligation to categorize a certain proceeding as a ratesetting proceeding for purposes of Pub. Util. Code § 1701.1 is not synonymous with the scope of the ratesetting exemption under Public Resources Code Section 21080(b)(8). We agree that the issues to be determined go beyond merely authorizing rate recovery and setting rates. It is also not convincing that the categories for exemption under Section 21080(b)(8) apply in this case. Of the activities permitting an exemption from CEQA, only Section 21080(b)(8)(D) would seem possible. However, that exemption applies to projects necessary to maintain service within existing areas. In this case, we are considering approval of the WMP and ALs 88 and 90 for expanded service areas. Accordingly, we do not see that Section 21080(b)(8) applies to exempt the WMP from CEQA.

Finally, we look at *Shawn v. Golden Gate Bridge District*. The issue involved whether CEQA applied to the decision of Golden Gate Bridge, Highway and

Transportation District to increase bus fares. The defendants cited to two Public Utilities Commission cases where the Supreme Court had denied writ of review, and argued that the denials equated to a decision on the merits. The court in *Shawn* instead noted that the Commission decisions "carefully avoid holding that all ratemaking determinations…are exempt from CEQA." Rather they hold only that an EIR is not required in every rate case, but that the 'policy provisions' of CEQA do apply. "The Commission will consider potential environmental impact in rate matters." Accordingly, we conclude that the findings in *Shawn* do not support a finding that the WMP or ALs 88 and 90 are exempt from CEQA.

Conclusion

While the record in this proceeding was sufficient to reach a determination that CEQA is applicable to the present WMP together with ALs 88 and 90, there is not a sufficient record before the Commission to make a proper determination regarding the scope of the environmental review the Commission must perform. For example, it is not clear whether an EIR or a negative declaration may be the proper CEQA document for the Commission to prepare. We are aware that either Los Angeles County or the City of Santa Clarita has prepared an EIR for each of the development projects to which AL 88 or AL 90 relates. To the extent that the environmental impacts that the Commission would properly need to consider in making its decision(s) in these proceedings are already being reviewed under CEQA by another agency, we see no reason to duplicate that effort here.

In order to determine the proper scope of the environmental review that the Commission must itself perform, we order Valencia to file with the Commission a Proponent's Environmental Assessment (PEA) consistent with Rule 17.1 of the Commission's Rules of Practice and Procedure, which addresses

the service area expansions proposed in ALs 88 and 90 and reflected in the WMP. We direct that the PEA be filed with the Commission within 60 days of the date of this order. We also direct Valencia, as part of or in addition to that PEA, to submit copies of any EIRs relating to ALs 88 and 90, and identify any governmental decisions or actions taken by local agencies relating to those EIRs. Similarly, any future ALs based upon the WMP will require submission of a PEA and any related EIRs or other CEQA documents; futhermore, any EIRs corresponding to the WMP, and relating to Valencia, also need to be submitted. It is our intent that a review of these documents will provide the Commission with sufficient information to potentially limit the scope of necessary environmental review by this agency.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 7, and reply comments were filed on October 13, 2000 by Sierra Club, Valencia and Ventura. We have reviewed the comments and made changes to the proposed decision where appropriate.

Findings of Fact

1. The Commission requires each Class A and Class B utility to file a WMP in its general rate case proceeding, which is typically filed every three years.

2. The WMP evaluates the long-term demand for water and water supplies and conservation programs available to meet that demand.

3. Water companies may seek to expand their service areas through advice letter filings.

4. The Commission requires water companies to prove the adequacy of supply prior to receiving authorization to serve additional areas.

5. The Commission has previously determined that Valencia has sufficient supply to serve its current customers in its approved service territory.

6. Valencia bears the burden of proving that it has adequate supplies to serve customers in any proposed additional service area.

7. The Commission adjudicates the extension of a utility's service territory and assures itself that adequate water is available to meet demand.

8. In Resolution W-4154, the Commission ordered Valencia to file an updated WMP by January 3, 2000, to enable the Commission and all interested parties to evaluate the effects of further expansion of its service area on its water supply.

9. On March 20, 2000, Valencia filed AL 88 seeking authority to expand its service area to serve 1,898 new dwelling units.

10. On September 19, 2000, Valencia filed AL 90 seeking authority to expand its service area to serve 4,060 customer units planned for construction.

11. The Commission's approval of advice letters seeking service area expansions to serve anticipated new customer demand reflected in the WMP, including ALs 88 and 90, can only occur after Commission approval of Valencia's WMP.

12. Given the interrelationship between the WMP, ALs 88 and 90, these filings need to be considered together in the analysis of whether there are one or more projects under CEQA and whether there is an applicable exemption from CEQA.

Conclusions of Law

1. The Commission's review and approval of Valencia's WMP, in conjunction with ALs 88 and 90, are projects for CEQA purposes.

2. Valencia's WMP, ALs 88 and 90 require discretionary approval.

3. Approval of Valencia's WMP is an essential step in the approval of ALs 88 and 90.

4. Expansion of Valencia's service area pursuant to the WMP, ALs 88 and 90 has the potential to create a significant environmental impact.

5. The WMP is not exempt from CEQA review as a planning study for possible future actions.

6. The WMP is not exempt from CEQA as an Urban Water Management Plan.

7. The WMP is not exempt from CEQA as a ratesetting proceeding.

8. The record in this proceeding is not sufficient to determine the proper scope of the environmental review the Commission must perform.

INTERIM ORDER

IT IS ORDERED that:

1. Valencia Water Company (Valencia) shall file a Proponent's Environmental Assessment (PEA) consistent with Rule 17.1 of the Commission's Rules of Practice and Procedure, which addresses the service area extensions proposed for Valencia in the Water Management Program (WMP), Advice Letter (AL) 88 and AL 90. Valencia shall file the PEA with the Commission within 60 days of the date of this order. In conjunction with or as a part of that PEA, Valencia shall also submit copies of all relevant Environmental Impact Report (EIRs) associated with the WMP, ALs 88 and 90, along with evidence of the final decisions or actions taken by the local agencies with respect to each of those EIRs and the relevant projects.

2. Following review of these documents, the Commission shall determine the scope of necessary environmental review by this agency.

3. The assigned Administrative Law Judge shall take the necessary steps to include a California Environmental Quality Act review of ALs 88 and 90 in this proceeding.

4. In order to confirm Valencia's assertion that "Valencia is not seeking authority through this WMP proceeding to serve any portion of the Newhall Ranch Specific Plan," Valencia shall also provide both the revised draft and final EIR for the Newhall Ranch.

5. This proceeding shall remain open to address Valencia's 1999 WMP, and ALs 88 and 90.

This order is effective today.

Dated October 19, 2000, at Los Angeles, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners